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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 VICKI JOHNSON,

Case No. 2:18-cv-01987-APG-GWF

8
9 Plaintiff,

ORDER

v.

10 NANCY A. BERRYHILL, Acting
11 Commissioner of Social Security,

12 Defendants.

13 This matter is before the Court on Plaintiff's Amended Complaint (ECF No. 5), filed on
14 November 16, 2018.

15 **BACKGROUND**

16 On October 18, 2018, the Court entered an order granting Plaintiff's Application for Leave
17 to Proceed *In Forma Pauperis* and dismissing Plaintiff's complaint without prejudice. *See* ECF
18 No. 2. The Court granted Plaintiff leave to amend and instructed Plaintiff to file an amended
19 complaint correcting the noted deficiencies of her original complaint no later than November 16,
20 2018. Plaintiff alleges a claim against the Social Security Administration (SSA). Plaintiff appears
21 to challenge its denial of social security benefits. Plaintiff appears to allege that the Social Security
22 Commissioner denied her social security benefits and now seeks judicial review of that decision.

23 **DISCUSSION**

24 Upon granting a request to proceed in forma pauperis and granting leave to amend, a court
25 must additionally screen a complaint pursuant to 28 U.S.C. §1915(e). Specifically, federal courts
26 are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to
27 state a claim upon which relief may be granted, or seeks monetary relief from a defendant/third
28 party plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion

1 thereof, should be dismissed for failure to state a claim upon which relief may be granted “if it
2 appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that
3 would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A
4 complaint may be dismissed as frivolous if it is premised on a nonexistent legal interest or
5 delusional factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a
6 finding of factual frivolousness is appropriate when the facts alleged rise to the level of the
7 irrational or the wholly incredible, whether or not there are judicially noticeable facts available to
8 contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

9 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to
10 amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of
11 the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*,
12 70 F.3d 1103, 1106 (9th Cir. 1995). In its order (ECF No. 2), the Court gave Plaintiff leave to
13 amend the noted deficiencies of her complaint and informed Plaintiff that pursuant to Local Rule
14 15-1, the Court could not refer to a prior pleading in order to make her amended complaint
15 complete.

16 **I. Screening the Instant Amended Complaint**

17 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen
18 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
19 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which
20 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is
21 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
22 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a
23 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
24 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). When a court dismisses a
25 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with
26 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
27 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106
28 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
2 complaint for failure to state a claim upon which relief can be granted. Review under Rule
3 12(b)(6) is essentially a ruling on a question of law. See *Chappel v. Laboratory Corp. of*
4 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short
5 and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.
6 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not
7 require detailed factual allegations, it demands “more than labels and conclusions” or a
8 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,
9 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true
10 all well-pled factual allegations contained in the complaint, but the same requirement does not
11 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of
12 action, supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where
13 the claims in the complaint have not crossed the line from plausible to conceivable, the
14 complaint should be dismissed. *Twombly*, 550 U.S. at 570.

15 To satisfy the screening requirements with respect to social security appeals, a plaintiff
16 must set forth the following: (1) the plaintiff must establish that she has exhausted her
17 administrative remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced
18 within sixty days after notice of a final decision; (2) the complaint must indicate the judicial
19 district in which the plaintiff resides; (3) the complaint must state the nature of the plaintiff’s
20 disability and when the plaintiff claims she became disabled; and (4) the complaint must contain
21 a plain, short, and concise statement identifying the nature of the plaintiff’s disagreement with
22 the determination made by the Social Security Administration and show that the plaintiff is
23 entitled to relief. *Montoya v. Colvin*, 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016) (citing
24 *Soete v. Colvin*, 2013 WL 5947231, *2 (D. Nev. Nov. 4, 2013); *Pitcher v. Astrue*, 2012 WL
25 3780354, *1 (D. Nev. Aug. 30, 2012)).

26 Plaintiff’s original complaint was dismissed because Plaintiff failed to allege that she
27 exhausted her administrative remedies, timely commenced this case, that she resides in this
28 judicial district, the nature of her disability, or the basis of her challenge to Social Security

1 Administration's determination denying her benefits. *See* ECF No. 2. Her amended complaint
2 again fails to correct many of the defects identified in this court's prior screening order. Plaintiff
3 again fails to allege that she exhausted her administrative remedies or that she timely
4 commenced this case. Although unclear, Plaintiff provides more information as to the nature of
5 her disability. Plaintiff, however, fails to coherently identify the nature of her disagreement with
6 the determination made by the Social Security Administration and make a showing that she is
7 entitled to relief. The Court will, therefore, dismiss Plaintiff's amended complaint without
8 prejudice and with leave to amend. Plaintiff has another opportunity to file a second amended
9 complaint.

10 If Plaintiff elects to proceed in this action by filing an amended complaint, she is
11 informed that the court cannot refer to a prior pleading in order to make her amended complaint
12 complete. Local Rule 15-1 requires that an amended complaint be complete in itself without
13 reference to any prior pleading. This is because, as a general rule, an amended complaint
14 supersedes the original complaint. *See Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir.
15 2011); *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended
16 complaint, the original pleading no longer serves any function in the case. Plaintiff is advised
17 that litigation will not commence upon the filing of an amended complaint. Rather, the Court
18 will need to conduct an additional screening of the amended complaint pursuant to 28 U.S.C. §
19 1915(e). If Plaintiff fails to file an amended complaint or fails to cure the deficiencies identified
20 above, the Court will recommend that the complaint be dismissed with prejudice. Plaintiff shall
21 have until **April 8, 2019** to file a second amended complaint correcting the noted deficiencies.
22 Accordingly,

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IT IS HEREBY ORDERED the Amended Complaint (ECF No. 5) is **DISMISSED** with leave to amend. Plaintiff shall have until **April 8, 2019** to file a second amended complaint correcting the noted deficiencies.

Dated this 8th day of March, 2019.



GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE